

1 KEKER, VAN NEST & PETERS LLP  
2 ELLIOT R. PETERS - #158708  
3 epeters@keker.com  
4 STEVEN P. RAGLAND - #221076  
5 sragland@keker.com  
6 PATRICK E. MURRAY - #293765  
7 pmurray@keker.com  
8 633 Battery Street  
9 San Francisco, CA 94111-1809  
Telephone: 415 391 5400  
Facsimile: 415 397 7188

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

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7 RODNEY LEE SODA, APLC  
8 RODNEY LEE SODA (SBN 72738)  
E-mail: rsoda@sodalaw.net  
9 DAVID GREENBERG (SBN 172211)  
E-mail: dgreenberg@sodalaw.net  
74-361 Highway 111, Suite 10  
10 Palm Desert, CA 92260  
Telephone: 760 320 2000  
Facsimile: 760 773 5011

12 Attorneys for Defendant  
JOHN WEESMAN

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF RIVERSIDE  
16 INDIO BRANCH

17 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Case No. INF1901460

18 Plaintiff,  
19 v.  
20 STEPHEN PHILIP POUNGET,  
21 RICHARD HUGH MEANEY, and JOHN  
ELROY WEESMAN,  
22 Defendants.

NOTICE OF MOTION AND MOTION TO  
SET ASIDE INDICTMENT (CAL. PENAL  
CODE §995) AND NON-STATUTORY  
MOTION TO DISMISS AS TO DEFENDANT  
JOHN WEESMAN

Date: January 17, 2020  
Time: 8:30 a.m.  
Dept.: 3R  
Judge: HON. HAROLD HOPP

Date Filed: February 14, 2017  
Trial Date: None set

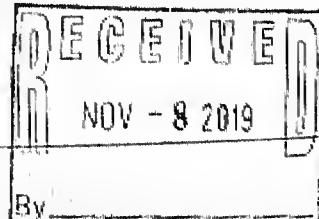
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MOTION TO DISMISS INDICTMENT  
Case No. INF1901460

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD**

**PLEASE TAKE NOTICE** that pursuant to Cal. Penal Code §995, Criminal Local Rule 4065, and this Court's inherent authority, on January 17, 2020, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 3R of the Superior Court of California in and for the County of Riverside, Defendant John Wessman ("Wessman") will and hereby does move to set aside the indictment and dismiss Counts 2, 4, 6, 8, 10, 12, 14, 16, 18, and 30 as to Wessman.

The motion is based upon this Notice, the accompanying Memorandum of Points and Authorities in support, the Declaration of Patrick E. Murray in support, all other supporting papers and documents on file with the Court, the record in this action, and such oral and documentary evidence as may be presented at or prior to the hearing.

Dated: November 8, 201

KEKER, VAN NEST & PETERS LLP

B

ELLIOT R. PETER

Attorneys for Defendant  
**JOHN WEISSMAN**

1      I. INTRODUCTION

2      The grand jury process is a fundamental safeguard against unjustified prosecution—going  
3      back to the founding of our republic and enshrined in the Bill of Rights. But to serve that  
4      purpose, the grand jury must only consider admissible evidence offered against a defendant, and  
5      then determine whether that evidence justifies indictment. If not, no charges may be returned.  
6      The prosecution is required to assist—not hinder—the grand jury's investigation. Unfortunately,  
7      none of that happened here, and Wessman was indicted as a result.

8      The People's case against John Wessman rests on his signature on 10 checks drawn on a  
9      bank account for Wessman Development payable to Union Abbey and Richard Meaney in 2012,  
10     2013, and 2014. The People allege that Meaney then made corresponding payments to then-  
11     mayor Stephen Pougnet in the same years. The People's case depends on the timing of these  
12     payments and their aggregate amount. The evidence does not support a connection from  
13     Wessman to Pougnet. The Grand Jury received evidence that [REDACTED]  
14     [REDACTED]  
15     [REDACTED] No direct evidence connects Wessman to payments  
16     to Pougnet. None of the People's witnesses [REDACTED]  
17     [REDACTED]

18     In public corruption cases the payer normally wants something from the public office, not  
19     vice versa. Here, the evidence presented does not support the People's narrative that Wessman  
20     bribed Pougnet to receive a benefit regarding his company's development projects. Wessman's  
21     biggest project before the City Council from 2012-2014 was the development of Downtown Palm  
22     Springs. The project was so strongly desired by City officials and the community they threatened  
23     to sue Wessman to make the project happen. Indeed, every single City Council vote on the  
24     project was unanimous. In fact, every vote on all of Wessman's projects during the relevant time  
25     were unanimous, and many were considered so minor and uncontroversial that the City Staff had  
26     recommended that the various resolutions be passed without debate. Not only would Pougnet's  
27     vote be inconsequential to the outcome of these matters, nothing about Pougnet's voting pattern  
28     would set him apart from any other City Council member as somehow favoring Wessman.

1 To support their inadequate presentation of evidence, the People made much of irrelevant  
2 information. They [REDACTED]  
3 [REDACTED]  
4 [REDACTED] By mischaracterizing the evidence related to [REDACTED], the  
5 People used it to misdirect the grand jury and cast suspicion on Wessman. They did the same in  
6 their presentation of other inadmissible evidence, including [REDACTED]  
7 [REDACTED], hearsay statements, and [REDACTED]  
8 [REDACTED] When witnesses tried to explain why [REDACTED]  
9 [REDACTED], the prosecutors quickly cut them off, and [REDACTED]  
10 [REDACTED]

11 Ultimately, the grand jury returned an indictment against John Wessman for charges that  
12 are not only unsubstantiated, but in several instances, time-barred. Mr. Wessman now moves this  
13 Court to set aside the charges against him.

14 **II. STATEMENT OF FACTS AND GRAND JURY RECORD<sup>1</sup>**

15 On August 5, 2019, the Riverside County District Attorney's office empaneled a grand  
16 jury to consider charges against Pougnet, Wessman, and Meaney. After seven days of  
17 proceedings, the grand jury returned a 30 Count indictment against the defendants. Wessman was  
18 charged with nine counts of violating Cal. Penal Code § 67 (Counts 2, 4, 6, 8, 10, 12, 14, 16, 18)  
19 and one count of conspiracy in violation of Penal Code § 182 (Count 30). Following is a  
20 summary of evidence presented to the grand jury with relation to Mr. Wessman.

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
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18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 <sup>2</sup> As discussed in Section III.A.1, exculpatory evidence not adequately presented to the grand jury  
28 revealed that the law and the City's past practices supported this vote. All People's Exhibits are  
attached and filed with the Declaration of Patrick E. Murray ("Exh.")

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
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11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
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18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26  
27 [REDACTED] The record does not show that Wessman knew  
28 or that anyone other than [REDACTED] that Wessman had any role

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 III. STATEMENT OF ISSUES AND ARGUMENT

18 An indictment must be set aside if the defendant was indicted without reasonable or  
19 probable cause. § 995 (a)(1)(B). A defendant may challenge an indictment by way of a § 995  
20 motion based on (1) improper presentation of incompetent and irrelevant evidence; (2)  
21 insufficient evidence as to each element of the crime charged; (3) failure to inform the grand jury  
22 of the nature and existence of exculpatory evidence;<sup>5</sup> or (4) that the charged offenses are time-  
23 barred. See, e.g., *Cummiskey v. Superior Court*, 3 Cal. 4th 1018, 1033-34, 39(1992), as modified  
24 on denial of reh'g (Feb. 11, 1993); *People v. Backus*, 23 Cal. 3d 360, 392-393 (1979); *People v.*

25  
26 <sup>5</sup> While the California Court of Appeal has indicated that a § 995 motion is the correct vehicle for  
27 a *Johnson* claim, this is somewhat at odds with the requirement that the analysis under a § 995  
28 motion be limited to the “four corners” of the grand jury transcript. See *People v. Duncan*, 78  
Cal. App. 4th 765, 772 (2000); California Criminal Motions § 2:19 *Preliminary Hearings and*  
*Grand Jury Indictments* (Sept. 2019). In an abundance of caution, this motion is also styled as a  
non-statutory motion to dismiss.

1        *Abayhan*, 161 Cal. App. 3d 324, 328-329, (1984). For all four of these reasons, the charges  
2 against Wessman must be set aside.

3            A.     **The grand jury's investigation was hindered by the extent of the irrelevant  
4 and incompetent evidence as presented by the People.**

5        The grand jury cannot "fulfill its obligation to act independently and to protect citizens  
6 from unfounded obligations . . . if it is invited to indict on the basis of incompetent and irrelevant  
7 evidence." *Backus*, 23 Cal. 3d at 393. Accordingly, evidence presented to a grand jury must be  
8 admissible. § 939.6(b).<sup>6</sup> As the California Supreme Court has held, an indictment must be  
9 dismissed if "the extent of incompetent and irrelevant evidence" and the manner of the  
10 presentation to the grand jury would make it "unreasonable to expect the grand jury [to] limit its  
11 consideration to the admissible, relevant evidence." *Backus*, 23 Cal. 3d at 393.

12        Here, the way the People conducted the grand jury proceedings tainted the fact-finding  
13 process. Given the extent of the irrelevant testimony, improper questions, and inadmissible  
14 evidence, a detailed analysis of each objection could not fit within the confines of this Motion.  
15 See, e.g., Declaration of Patrick E. Murray ("Murray Decl."), Exh. A. Nonetheless, several broad  
16 categories illustrate why the charges against Wessman must be set aside.

17            1.     **The People mischaracterized the facts, misrepresented the law, and  
18 withheld exculpatory information on [REDACTED].**

19        As noted above, the People made much of Pougnet's vote [REDACTED]

20        [REDACTED] There is no evidence surrounding [REDACTED] that indicates any conspiratorial  
21 agreement, intent to improperly influence official action, or payment of a bribe. Nonetheless, the  
22 People used [REDACTED] to obscure the weakness in their bribery theory.

23        The timing of [REDACTED] alone shows its irrelevance. [REDACTED]

24        [REDACTED] There was no  
25 evidence of an offer prior to that time. But the bribery statute at issue here, along with the  
26 relevant caselaw, contemplates a bribe to influence official actions occurring in the future. §67  
27 ("Every person who gives or offers any bribe . . . with intent *to influence* [an executive officer in

28        <sup>6</sup> The applicable law contains a single exception not relevant here, relating to a category of  
29 hearsay offered through law enforcement personnel. See § 939.6(c).

1 California] in respect to any act, decision, vote, opinion, or other proceeding") (emphasis added);  
2 *People v. Gaio*, 81 Cal. App. 4th 919, 929 (2000) ("[B]ribery does not require that a specific  
3 official action be pending when the bribe is given . . . it is sufficient that the evidence reflect that  
4 *there existed* subjects of *potential* action by the recipient, and that the bribe was given or received  
5 with the intent that some such action *be influenced.*") (emphasis added). It would be nonsensical  
6 to offer a bribe to influence a vote that had already occurred.

7 A juror could not help being confused about [REDACTED] relevance, however, given its  
8 prominence in the People's narrative and prosecutors' attempts to obfuscate the timeline.<sup>7</sup> And in  
9 closing, the People affirmatively misstated the timeline, falsely stating that [REDACTED]

10 [REDACTED]

11 Furthermore, the People mischaracterized the facts and law relevant to [REDACTED].

12 Prosecutors elicited mistaken (or false) testimony that the City had never [REDACTED]

13 [REDACTED] Yet (1)

14 California law supported the City's decision [REDACTED] (2) two years  
15 prior, the City had taken the identical action regarding a [REDACTED]

16 [REDACTED],

17 and (3) [REDACTED], signed by both the City Attorney and the City Manager,  
18 recommended [REDACTED]. The People's failure to inform the grand jury of the existence  
19 and nature of this exculpatory information violated their obligation under §939.71(a) and *Johnson*  
20 *v. Superior Court*, 15 Cal. 3d 248 (1975).

21 *First, City of Merced v. American Motorists Insurance Company* supports the City  
22 Council's decision [REDACTED]. 126 Cal. App. 4th 1316  
23 (2005). In *Merced*, a real estate developer had purchased a tract of land, agreed to complete  
24 certain improvements thereon, and obtained a performance bond to guarantee the completion of  
25 those improvements. *Id. at* 1318-19. The developer became insolvent. *Id. at* 1320-21. A new

26  
27 <sup>7</sup> See, e.g., [REDACTED]  
28 [REDACTED]

1 California] in respect to any act, decision, vote, opinion, or other proceeding") (emphasis added);  
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10 [REDACTED]  
11 Furthermore, the People mischaracterized the facts and law relevant to [REDACTED].

12 Prosecutors elicited mistaken (or false) testimony that the City had never [REDACTED]

13 [REDACTED] Yet (1)  
14 California law supported the City's decision [REDACTED] (2) two years  
15 prior, the City had taken the identical action regarding [REDACTED]

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24 certain improvements thereon, and obtained a performance bond to guarantee the completion of  
25 those improvements. *Id. at* 1318-19. The developer became insolvent. *Id. at* 1320-21. A new

26  
27 <sup>7</sup> See, e.g. [REDACTED]  
28 [REDACTED]

1 purchaser, Wu, purchased the land on the condition that the city “would make demand on the  
2 bonds and use its best efforts to obtain the bond proceeds, which it would pay to Wu to defray his  
3 costs in completing [the prior owner’s] obligations.” *Id.* at 1320. The City Council “passed a  
4 resolution authorizing Wu’s attorney . . . to file suit on the City’s behalf to enforce [the prior  
5 owner’s] bond obligations.” *Id.* at 1321. The bonding insurance company sued the City, alleging  
6 the action was improper and illegal. The trial court found against the insurance company on all  
7 counts, and the Court of Appeals affirmed. *Id.* at 1328.

8 [REDACTED] and *Merced* have striking similarities – just as Wu would not have  
9 purchased the property had the City not promised to call the bonds and provide any payment  
10 collected to Wu, likewise [REDACTED]

11 [REDACTED] That the Court of Appeal found nothing untoward or illegal  
12 about an almost identical arrangement to that between Wessman and the City [REDACTED]  
13 is exculpatory insofar as it provides ample support for [REDACTED]  
14 [REDACTED] and undercuts any finding that [REDACTED].

15 *Second*, the People failed to inform the grand jury that two years prior to [REDACTED]  
16 [REDACTED] the City Council had approved a very similar Reimbursement Agreement for a different  
17 developer. On July 21, 2010, the City Council approved an agreement providing that the City  
18 would make a demand on an insolvent land owner to complete the public improvements required  
19 pursuant to a subdivision improvement agreement. It agreed that, “the City will essentially assign  
20 the City’s rights to make a claim on the bonds that have been posted to secure [the owner’s]  
21 performance . . . to [the new purchaser of the land] . . . and [the purchaser’s] attorney will be  
22 authorized to commence proceedings to use the proceeds of the [] bonds to fund the completion  
23 of the public improvements.” Murray Decl., Exh. B [City Council Staff Report re Ridgeback,  
24 July 21, 2010]. That is exactly what happened with [REDACTED], yet [REDACTED]  
25 [REDACTED]

26 *Third*, before [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] Yet, the People [REDACTED]  
5 [REDACTED]

6 The People's failure to adequately present this exculpatory information to the grand jury  
7 substantially prejudiced Wessman because it painted a false picture of the City Council's vote as  
8 unprecedented and unjustified.

9 2. Evidence related to [REDACTED] was irrelevant to and  
10 inadmissible against Wessman.

11 Before the grand jury heard testimony [REDACTED], the  
12 grand jury was presented with [REDACTED]  
13 [REDACTED]. Prosecutors' questions about [REDACTED] were peppered throughout the  
14 proceedings, often coming in the middle of lines of questioning about [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 Both [REDACTED] were called. The People allowed [REDACTED]  
18 to extemporize about how—at an unspecified time—[REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] The People also asked [REDACTED]  
22 [REDACTED]  
23 [REDACTED]. This testimony had no possible  
24 purpose other than to smear real estate developers like Wessman, and invite speculation. In fact,  
25 [REDACTED] testimony was so prejudicial that [REDACTED]  
26 [REDACTED]

27 Moreover, none of this evidence was admissible against John Wessman. *See People v.*  
28 *Murphy*, 60 Cal. App. 2d 762, 773 (1943) (proof of conspiracy "cannot consist merely in the acts

1 and declarations of the alleged co-conspirators," there must be an "independent showing as to the  
2 existence of the conspiracy"); *People v. Griffin*, 98 Cal. App. 2d 1, 53 (1950).

3       **3. Prosecutors presented evidence against all three defendants without a  
4 way to separate irrelevant and inadmissible evidence as to Wessman**

5       Evidence of the acts and declarations of an alleged co-conspirator are only relevant if  
6 there is independent proof of a conspiracy. See Cal. Evid. Code §§ 1200, 1223; *Murphy*, 60 Cal.  
7 App. 2d at 773; *People v. Leach*, 15 Cal. 3d 419, 436 (1975); *Griffin*, 98 Cal. App. 2d at 53.

8       Here, there is no evidence of any conspiratorial agreement between Wessman and Pouget and/or  
9 Meaney. Yet, throughout the proceedings the grand jury was inundated with details of [REDACTED]

10 [REDACTED] that had no connection whatsoever to Wessman and  
11 were not admissible against him. This included repeated references to [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 without any evidence that Wessman was aware of that [REDACTED] that Wessman  
15 had no involvement with, and many other acts and statements that had no connection to  
16 Wessman.

17       At the very least, the grand jury should have been instructed about what documents and  
18 testimony they must disregard if they did not find proof that Wessman was involved in the  
19 conspiracy. See *Griffin*, 98 Cal. App. 2d at 53 (1950) (holding that if proof of a conspiracy  
20 cannot be found to exist based on the circumstantial evidence, the jury should be instructed to  
21 disregard the evidence of the acts of the coconspirators). Instead, the grand jury was left with a  
22 mountain of evidence to sift through, the majority of which was not admissible against John  
23 Wessman.

24       **4. Prosecutors improperly questioned witnesses and smeared Wessman's  
25 character**

26       In addition to dumping irrelevant and inadmissible evidence on the grand jurors, the  
27 prosecutors' manner of questioning witnesses and presenting their case to the grand jurors was  
28 improper. The transcript is rife with leading questions, invitations for speculation, improper  
vouching for law enforcement witnesses, eliciting irrelevant testimony, and needless argument

1 [REDACTED] that served only to bias grand jurors against Wessman. See Murray Decl., Exh  
2

3 A.

4 A prime example is [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 This rhetorical, hypothetical question was asked solely to prejudice Wessman.

13 At several other points in the questioning, the People mischaracterized facts. In  
14 questioning [REDACTED]

15 [REDACTED] But there was no evidence to suggest that [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] But, again, there was no good faith basis for this question,  
19 let alone evidence in the record to suggest that [REDACTED]

20 [REDACTED]  
21 The People also elicited testimony from law enforcement officials that [REDACTED]  
22 [REDACTED] Such testimony was irrelevant and improper, but  
23 prosecutors encouraged this testimony anyway. [REDACTED]  
24 [REDACTED]

25 The above examples are far from an exhaustive recounting of all deficiencies in the  
26 People's manner of questioning witnesses, but each illustrates the inherent unfairness in the  
27 proceedings. Without competent evidence to connect Wessman to the alleged bribery scheme,  
28 prosecutors flooded the record with inadmissible evidence to the extent where "it is unreasonable

1 to expect that the grand jury could limit its consideration to the admissible, relevant evidence.”  
2 *Backus*, 23 Cal. 3d at 393. As a result, the People interfered with the grand jury’s ability to act  
3 independently and impartially, and the charges against Wessman must be dismissed.

4       **B. The charges against Wessman are based on insufficient admissible evidence  
5 and should be set aside.**

6       To support an indictment, prosecution must have produced evidence to the grand jury  
7 showing that there is reasonable or probable cause to believe the defendant committed the  
8 charged offenses. *Birt v. Superior Court*, 34 Cal. App. 3d 934, 937 (1973); *Garabedian v.  
9 Superior Court*, 59 Cal. 2d 124, 126-27 (1963). There must be “some evidence” to support *every*  
10 necessary element of the charged offense. See, e.g., *Rodriguez v. Superior Court*, 159 Cal. App.  
11 3d 821, 827 (1984); *People v. Caffero*, 207 Cal. App. 3d 678, 684-86 (1989). Moreover, “some  
12 evidence” does not mean “any evidence.” *Dong Haw v. Superior Court*, 81 Cal. App. 2d 153,  
13 158 (1947). The evidence supporting each element must be relevant and admissible. *Id.* at 158-  
14 159. While this showing may be satisfied by circumstantial evidence, all inferences drawn from  
15 the circumstances must be reasonable. *Stark v. Superior Court*, 52 Cal. 4th 368, 406-07 (2011).  
16 If the evidence shows it is as probable that the defendant did not commit the crime as that he did,  
17 there is no probable cause and the charge must be set aside. *Malleck v. Superior Court*, 142 Cal.  
18 App. 2d 396, 398-99 (1956).

19       1. **There is insufficient evidence to support the bribery counts (Nos. 2, 4,  
20 6, 8, 10, 12, 14, 16, and 18) against Wessman.**

21       To support the indictment of Wessman for the bribery counts, the People must have  
22 presented evidence to the grand jury to show that Wessman had the specific intent to corruptly  
23 influence then-mayor Pougnet. §§ 67; 7(3, 6); Judicial Council of California Criminal Jury  
24 Instruction 2600; Cal. Jury Instr.--Crim. 7.00.5. “The offer of a gratuity to an officer [is] not a  
25 crime unless the act of giving or offering [is] coupled with a corrupt intent to influence the  
26 recipient.” *People v. Britton*, 205 Cal. App. 2d 561, 565 (1962). While circumstantial evidence  
27 may be used to prove corrupt intent, the “language used and the circumstances” must “clearly  
28 show an intent to bribe.” Judicial Council of California Criminal Jury Instruction 2600. *see, e.g.,*  
*People v. Wong*, 186 Cal. App. 4th 1433, 1447 (2010); *People v. Meacham*, 256 Cal. App. 2d

1 735, 738, 744-45 (1967) (finding circumstantial evidence of corrupt intent where the defendant  
2 suggested to city officials that they could become his “nondisclosed or silent partners without  
3 investment” if they dropped their opposition to his business practices).

4 For example, in *Dong Haw v. Superior Court*, the Court of Appeal restrained the superior  
5 court from proceeding to trial against Haw for counts of bribery and conspiracy to commit bribery  
6 because of a lack of competent evidence. 81 Cal. App. 2d at 160. Haw, along with his adult  
7 children James and Rose, was charged with a scheme to bribe the Sacramento city manager. *Id.*  
8 at 154-55. The evidence showed that the Haw owned real property in Sacramento’s Chinatown,  
9 and was the landlord for a liquor store and a cocktail lounge referred to as “The Chinese Social  
10 Club.” *Id.* at 155. The alleged bribery scheme took place when James delivered 12 bottles of  
11 assorted liquors, \$3,000 in cash, and a letter signed “Dong Haw” to the home of the Sacramento  
12 city manager. *Id.* at 154-55. The letter asked the city manager to reopen Chinese clubrooms that  
13 had recently been closed, that such an action “meant a great deal to the business of Chinatown,”  
14 and that the city manager could expect more money at Christmastime. *Id.* at 155-56. Attached to  
15 the money was Haw’s business card, which bore his name and the words “Yick Chong Co.” *Id.*  
16 Upon delivery, James told the city manager that the letter was from Haw. *Id.* After this delivery,  
17 the city manager, in the presence of the district attorney, spoke to Rose over the telephone, who  
18 said that her father wished to speak with him, but that her father was out of the city. *Id.* at 156.  
19 The handwriting in the letter was identified as Rose’s, and other evidence showed that she had  
20 signed a letter for her father in the past. *Id.* The delivery truck used by James was registered to  
21 Haw and Yick Chong. *Id.* The liquor bottles were packed in a carton labeled “Yick Chong Co.”  
22 and the liquor bottles bore serial numbers in sequence to the numbers on similar bottles examined  
23 at the liquor store on Haw’s property. *Id.* The People’s theory was that the facts and  
24 circumstances connected Dong Haw with the bribery conspiracy. *Id.* at 156-57.

25 The Court of Appeal reversed, holding that this level of circumstantial evidence was  
26 insufficient to connect Dong Haw to either “the act of conspiracy or offer to bribe.” *Id.* at 157-58.  
27 Here, there is far less connecting Wessman to an alleged act of bribery or a bribery conspiracy  
28 than there was for Dong Haw. Indeed, the primary evidence of a bribery scheme involving

1 Wessman [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 [REDACTED] But none of this provides evidence of Wessman's corrupt  
5 intent.

6 First, there is no evidence in the record about how payments for various partners,  
7 consultants, and vendors were processed at Wessman Development. During the time in question,  
8 Wessman Development was involved in numerous real estate projects and the Downtown project  
9 was just one of them. Did Wessman simply sign a stack of checks that were given to him by  
10 subordinates? Did he ask what every check was for? Did he find out what every recipient did  
11 after they deposited each check? There was no evidence before the grand jury to answer any of  
12 these questions, and any attempt to guess the answers would be improper, since it would  
13 necessarily rest upon speculation. *See Birt*, 34 Cal. App. 3d at 938.

14 Second, the fact that Wessman [REDACTED] does  
15 not allow for a reasonable inference that Wessman [REDACTED] with the corrupt intent to  
16 influence Pougnet. Wessman was the president of a company in charge of the 200-million-dollar  
17 Downtown project, in addition to many other real estate projects. [REDACTED]  
18 [REDACTED]

19 [REDACTED] These projects, of course, sometimes required  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 [REDACTED] The evidence showing that Wessman [REDACTED]  
24 is consistent with Wessman having the intent [REDACTED] Because the  
25 evidence is at *least* as consistent with lawful activity as with a bribery scheme, the indictment  
26 must be set aside. *Malleck*, 142 Cal. App. 2d at 399.

27 Third, there is no evidence Wessman was aware that [REDACTED]  
28 [REDACTED]. Indeed, there

1 is no evidence at all that Wessman [REDACTED]  
2 [REDACTED]  
3

3 Wessman cannot be indicted just because [REDACTED].

4 See *Dong Haw*, 81 Cal. App. 2d at 157-58 (“[m]ere association” insufficient to support an offer of  
5 a bribe).

6 Fourth, [REDACTED] does not allow for an inference of corrupt  
7 intent. The People’s central theory of the case is that it was suspicious that [REDACTED]  
8 [REDACTED]

9 [REDACTED] *But there was no evidence that Wessman*  
10 [REDACTED]  
11 [REDACTED]. The only mention of [REDACTED]

12 [REDACTED] Wessman was not a recipient of this email, nor was there any evidence showing that  
13 Wessman was ever made aware of Pougnet’s statement. That email, therefore, is inadmissible as  
14 to Wessman. Moreover, just as in *Dong Haw*, [REDACTED] is not  
15 enough to link Wessman [REDACTED], just as [REDACTED]  
16 [REDACTED] was insufficient to link Haw to [REDACTED]. 81 Cal.  
17 App. 2d at 158.

18 Furthermore, not only was there no evidence that Wessman knew [REDACTED]  
19 [REDACTED]  
20 [REDACTED] The People’s theory was not that [REDACTED]  
21 [REDACTED], their theory is that [REDACTED]  
22 [REDACTED]

23 To support this theory, the grand jury would have to speculate that [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 [REDACTED] Such speculation is not permissible. All inferences must be reasonable and based  
27 upon competent evidence in the record, otherwise they must be discarded. *Stark*, 52 Cal. 4th at  
28 406-07; *Birt*, 34 Cal. App. 3d at 938; *Dong Haw*, 81 Cal. App. 2d at 157-59.

1        In sum, there is nothing in the grand jury record close to “the language used and the  
2 circumstances” that would “clearly show” that Wessman had “an intent to bribe.” See Judicial  
3 Council of California Criminal Jury Instruction 2600. Because the People failed to present any  
4 admissible evidence that Wessman acted with corrupt intent to bribe Pougnet by signing company  
5 checks that went to Meaney, all bribery charges against Wessman must be set aside.

6              **2. There is insufficient evidence to support the conspiracy charge.**

7        Count 30 alleges that Wessman agreed with Meaney and Pougnet to violate state bribery  
8 statutes, § 67 and §68. But not only did the prosecution fail to produce sufficient evidence of an  
9 intent to commit bribery pursuant to §67 (see Section IV.B.1 above), the admissible evidence is  
10 insufficient to show that Wessman intentionally entered into an any illicit agreement whatsoever.

11       Section 182 requires proof of four elements: (1) an agreement between two or more  
12 people; (2) who have the specific intent to agree or conspire to commit an offense; (3) the specific  
13 intent to commit that offense; and (4) an overt act committed by one or more of the parties to the  
14 agreement for the purpose of carrying out the object of the conspiracy. §§ 182, 184; *People v.*  
15 *Swain*, 12 Cal. 4th 593, 600 (1996); *People v. Garcia*, 29 Cal. App. 5th 864, 872, (2018), *reh'g denied* (Dec. 20, 2018), *review denied* (Mar. 13, 2019). There must be competent, admissible  
16 evidence that would support a reasonable inference of both an unlawful agreement and the  
17 specific intent to enter into that agreement. *Dong Haw*, 81 Cal. App. 2d at 158 (“Conspiracies  
18 cannot be established by suspicions.”) (citation omitted); *People v. Donahue*, 46 Cal. App. 3d  
19 832, 840, (1975) (“Mere association alone cannot furnish the basis for a conspiracy.”); CALJIC  
20 6.12; CALJIC 6.13.

21       As detailed above, nothing about [REDACTED] indicated that he was  
22 even aware of [REDACTED] was doing anything untoward [REDACTED]  
23 [REDACTED], let alone evidence that Wessman intended to enter into an agreement to give and receive  
24 bribes with Meancy and Pougnet. See Sections II.C.4.

25       Nothing in [REDACTED] identified by the prosecution indicate that Wessman was part of an  
26 agreement to commit bribery. See Section II.C.3. Of [REDACTED] that the prosecution identified,  
27 Wessman [REDACTED], and nothing [REDACTED] could support an inference that

1 Wessman was wittingly part of a bribery conspiracy. [REDACTED]  
2 None [REDACTED]  
3 identified anything suspicious, let alone anything that would suggest [REDACTED]  
4 [REDACTED]. See Section II.C.2. In closing, the People were left resorting  
5 to pure speculation about these meetings, suggesting—without any evidence—that they tied  
6 Wessman to a bribery scheme. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 [REDACTED] To the contrary, since Wessman was  
10 involved in a public-private partnership to redevelop Downtown, [REDACTED] entirely  
11 consistent with lawful behavior. *Malleck*, 142 Cal. App. 2d at 399 (finding no probable cause  
12 where evidence was equally consistent with lawful behavior).

13 The only statement in the record [REDACTED]

14 [REDACTED]  
15 [REDACTED], who said that he [REDACTED]  
16 [REDACTED]. But this statement is not admissible against Wessman. See  
17 Cal. Evid. Code §§ 1200, 1223; *Leach*, 15 Cal. 3d at 436. Moreover, a reasonable inference  
18 cannot be based on “guesswork, speculation, or conjecture.” *Birt*, 34 Cal. App. 3d at 938.

19 Nor should any consideration be given to [REDACTED]

20 [REDACTED]  
21 [REDACTED] This statement is hearsay that is not admissible against Wessman  
22 for multiple reasons. It was made years after [REDACTED]  
23 [REDACTED] and after the FBI interviewed him. Accordingly, there is no hearsay exception  
24 because when it was made, the alleged conspiracy was long ended. See Cal. Evid. Code §§ 1200,  
25 1223; *Leach*, 15 Cal. 3d at 436. Additionally, as mentioned above, proof of a conspiracy “cannot  
26 consist merely in the acts and declarations of the alleged co-conspirators,” but there must be an  
27 [REDACTED]  
28 [REDACTED]

1 "independent showing as to the existence of the conspiracy." *Murphy*, 60 Cal. App. 2d at 773.

2 Finally, Wessman cannot be indicted for a conspiracy just because he had a relationship  
3 with someone else who allegedly was involved or had knowledge of some wrongdoing; "[m]ere  
4 association does not make a conspiracy." *Dong Haw* 81 Cal. App. 2d at 158.

5 For all these reasons, Count 30 of the indictment must be set aside as to Wessman.

6 **C. The indictment must be dismissed as to Wessman because the People failed to  
7 adequately present exculpatory evidence to the grand jury.**

8 Section 939.71(a) requires the People to "inform the grand jury of [the] nature and  
9 existence" of any exculpatory evidence of which it is aware. *Id.* This statute codifies the holding  
10 in *Johnson*, 15 Cal. 3d 248 (1975), where the California Supreme Court reasoned that the grand  
11 jury's obligation to ask for evidence that could "explain away" the charges would be illusory if  
12 the People did not present both the nature and existence of exculpatory evidence to the grand jury.  
13 *Johnson*, 15 Cal. 3d at 254-55.

14 If the People's failure to inform the jury of exculpatory evidence "results in substantial  
15 prejudice, it shall be grounds for dismissal of the portion of the indictment related to that  
16 evidence." § 939.71. The term "substantial prejudice" refers to whether "it is reasonably  
17 probable" that a result more favorable to the defendant would have been obtained if the  
18 exculpatory evidence had been disclosed to the grand jury. *Berardi v. Superior Court*, 149 Cal.  
19 App. 4th 476, 481 (2007). This analysis requires a consideration of the relative strengths and  
20 weaknesses of the evidence supporting the probable cause finding necessary to indict and the  
21 undisclosed exculpatory evidence. *Id.*

22 On August 8, 2019, [REDACTED]

23 [REDACTED]  
24 [REDACTED] There can thus be no dispute that the  
25 prosecutors were in possession of these documents and aware of their exculpatory nature at the  
26 time of the grand jury proceedings. Accordingly, their duty under *Johnson* was triggered at this  
27 time. *Johnson*, 15 Cal. 3d at 255.

28 Thus, at a minimum, the People's *Johnson* duty extends to all of the discovery that has  
been provided to the defendants and all City records related to the votes at issue in the indictment.

1 But it was only [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 [REDACTED] This complete failure to actually inform the grand jury of the nature and existence  
9 of *any* particular exculpatory evidence hampered the grand jury's investigatory function and, in  
10 so doing, caused substantial prejudice to Wessman.

11 This (non-)presentation falls far short of complying with *Johnson* and § 939.71. Both  
12 authorities require the People not only to inform the grand jury that potentially exculpatory  
13 evidence exists, but also to explain its exculpatory nature in a manner that does not minimize its  
14 importance. *McGill v. Superior Court*, 195 Cal. App. 4th 1454 (2011), is on point. In *McGill*, at  
15 the conclusion of grand jury proceedings, prosecutors told the jurors that a target of the  
16 investigation had identified an exculpatory witness, but that the prosecution did not believe this  
17 witness to have relevant testimony as to the target. *Id.* at 1487–88, 1499. The Court of Appeal  
18 rejected the prosecution's contention that such a presentation was sufficient under *Johnson*,  
19 holding that prosecutors had caused substantial harm to the defendant because "in practical effect,  
20 [it] caused the grand jury to refrain from even *inquiring* about potential exculpatory  
21 evidence." *Id.* at 1501 (emphasis in original). Similarly, in *Berardi*, defendants were prejudiced  
22 by the prosecution's mere summary of exculpatory material from a police report, and the Court  
23 held that the prosecution should have read the police report to the grand jury in its entirety. 149  
24 Cal. App. 4th at 496–499.

25 Had the grand jury been adequately informed of the nature and existence of the  
26 exculpatory information, it is unlikely that Wessman would have been indicted. The information  
27 showed that [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] Considering the  
6 already weak case against Wessman, it is “reasonably probable” that the grand jury would not  
7 have indicted Wessman for some or all of the charges brought against him had the nature and  
8 existence of this evidence been disclosed. *See Berardi*, 149 Cal. App. 4th at 481.

9           **D. The People have failed to show that there is probable cause to believe that  
10 Counts 2, 4, 6, 8, 10, and 12 are not time-barred.**

11           Counts 2, 4, 6, 8, 10, and 12 allege conduct occurring between September 2012 and  
12 November 2013, more than three years prior to the filing date of the Complaint. *See* § 801. To  
13 save these stale claims, the People relied on *Zamora* in their Complaint and Amended Complaint,  
14 reciting threadbare allegations intended to toll the limitations’ period. *People v Zamora*, 18 Cal.  
15 3d. 538 (1976). But *Zamora* requires the People to show: “(1) the date on which the offense was  
16 ‘discovered’; (2) how and by whom the offense was ‘discovered’; (3) lack of knowledge, both  
17 actual and constructive, prior to the date of ‘discovery’; (4) the reason why the offense was not  
18 ‘discovered’ earlier.” *Zamora*, 18 Cal. 3d at 564 n.26. *Zamora* further provides that “in order to  
19 hold a defendant over for trial the People bear the burden of producing evidence . . . before the  
20 grand jury . . . which demonstrates that there is probable cause to believe that” those four  
21 elements will be satisfied. *Id.*; *see also People v. Lopez*, 52 Cal. App. 4th 233, 248-49 (1997);  
22 *People v. Swinney*, 46 Cal. App. 3d 332, 336 (1975) (“Because the bar of limitations upon a  
23 criminal prosecution is a jurisdictional defect, the evidentiary foundation for the indictment or  
24 information must include some evidence that the prosecution is not barred by limitations.”).  
25 Where a defendant establishes via a § 995 motion that there is no such evidence, the indictment  
26 must be set aside. *See People v. Crosby*, 58 Cal.2d 713, 724-27 (1962).

27           Here, the People elicited testimony relevant to the statute of limitations from [REDACTED]  
28 [REDACTED]  
[REDACTED]

1 [REDACTED]  
2 [REDACTED] At no point did the prosecution elicit testimony or  
3 present evidence on "lack of knowledge, both actual and constructive, prior to the date of  
4 'discovery'; [or] the reason why the offense was not 'discovered' earlier." *Zamora*, 18 Cal. 3d at  
5 564 n.26. These deficiencies are fatal to a finding of probable cause that Counts 2, 4, 6, 8, 10,  
6 and 12 are not time-barred. *See Crosby*, 58 Cal.2d at 724-27.<sup>10</sup>

7 **IV. CONCLUSION**

8 For all the foregoing reasons, all charges against Wessman must be set aside.

9  
10 Dated: November 8, 2019

KEKER, VAN NEST & PETERS LLP

11 By: 

12 ELLIOT R. PETERS

13  
14 Attorneys for Defendant  
15 JOHN WEISSMAN

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 [REDACTED]  
27 <sup>10</sup> If the Court declines to grant Mr. Wessman's motion to set aside Counts 2, 4, 6, 8, 10, and 12  
28 due to lack of probable cause to toll the statute of limitations, Mr. Wessman respectfully requests  
the Court grant an evidentiary hearing to determine whether, as a matter of law, the statute of  
limitations bars the prosecution of Counts 2, 4, 6, 8, 10, and/or 12. *See Zamora*, 18 Cal. 3d at 564  
n.26 (trial court has discretion to hold such a hearing); *Lopez*, 52 Cal. App. 4th at 251.

1 KEKER, VAN NEST & PETERS LLP  
2 ELLIOT R. PETERS - #158708  
3 epeters@keker.com  
4 STEVEN P. RAGLAND - #221076  
5 sragland@keker.com  
6 PATRICK E. MURRAY - #293765  
7 pmurray@keker.com  
8 633 Battery Street  
9 San Francisco, CA 94111-1809  
10 Telephone: 415 391 5400  
11 Facsimile: 415 397 7188

12 RODNEY LEE SODA, APLC  
13 RODNEY LEE SODA - #72738  
14 E-mail: rsoda@sodalaw.net  
15 DAVID GREENBERG - #172211  
16 E-mail: dgreenberg@sodalaw.net  
17 74-361 Highway 111, Suite 10  
18 Palm Desert, CA 92260  
19 Telephone: 760 320 2000  
20 Facsimile: 760 773 5011

21 Attorneys for Defendant  
22 JOHN WEISSMAN

23  
24 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
25 IN AND FOR THE COUNTY OF RIVERSIDE  
26 INDIO BRANCH

27 THE PEOPLE OF THE STATE OF  
28 CALIFORNIA.

Case No. INF1901460

PROOF OF SERVICE

H Date: January 17, 2020  
Time: 8:30 a.m.  
Dept.: 3R  
Judge: HON. HAROLD HOPP

Date Filed: February 14, 2017  
Trial Date: None set

Plaintiff,

v.

JOHN WEISSMAN, et al..

Defendants.

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker, Van Nest & Peters LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On November 8, 2019, I served the following document(s):

- 1. NOTICE OF MOTION AND MOTION TO SET ASIDE INDICTMENT (CAL. PENAL CODE §995) AND NON-STATUTORY MOTION TO DISMISS AS TO DEFENDANT JOHN WEESMAN**
- 2. DECLARATION OF PATRICK E. MURRAY IN SUPPORT OF MOTION TO SET ASIDE INDICTMENT (CAL. PENAL CODE §995) AND NON-STATUTORY MOTION TO DISMISS AS TO DEFENDANT JOHN WEESMAN**
- 3. [PROPOSED] ORDER GRANTING MOTION TO SET ASIDE INDICTMENT (CAL. PENAL CODE §995) AND NON-STATUTORY MOTION TO DISMISS AS TO DEFENDANT JOHN WEESMAN**

- By regular **UNITED STATES MAIL** by placing a Copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker, Van Nest & Peters LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.
- by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy without error scanned into an electronic file in Adobe "pdf" format.

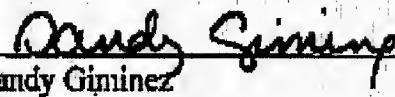
Michael A. Hestrin  
District Attorney  
Amy Barajas  
Emily Hanks  
Deputy District Attorney  
RIVERSIDE COUNTY DA'S OFFICE  
3960 Orange Street  
Riverside, CA 92501  
[amybarajas@rivcoda.org](mailto:amybarajas@rivcoda.org)  
[emilyhanks@rivcoda.org](mailto:emilyhanks@rivcoda.org)

Attorneys for Defendant STEPHEN POUNGET  
Malcolm Segal  
Emily E. Deringer  
SEGAL & ASSOCIATES, PC  
400 Capitol Mall, Suite 2550  
Sacramento, CA 95814  
[msegal@segal-pc.com](mailto:msegal@segal-pc.com)  
[ederinger@segal-pc.com](mailto:ederinger@segal-pc.com)

Counsel for Def. RICHARD MEANEY  
Peter Scalisi  
18685 Main Street, Suite 101  
Huntington Beach, CA 92648  
[lawoflps@aol.com](mailto:lawoflps@aol.com)

Rodney Lee Soda  
David Greenberg  
LAW OFFICES OF SODA & GREENBERG  
74361 Highway 111, Suite 10  
Palm Desert, CA 92260  
[rsoda@sodalaw.net](mailto:rsoda@sodalaw.net)  
[dgreenberg@sodalaw.net](mailto:dgreenberg@sodalaw.net)

1 Executed on November 8, 2019, at San Francisco, California. I declare under penalty of perjury  
2 under the laws of the State of California that the above is true and correct.

3   
4 Sandy Ginninez

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